

to the Government, I conclude that it is in the interest of justice to allow the mileage in question, as claimed by the deputy, but it is not to be understood that such a practice is to prevail hereafter, in view of the mandatory provisions of the act of 1890, *supra*.

Accordingly, you are authorized to pay Deputy Blackmore the proper fee for transporting the prisoner before the commissioner at Bridgeport, subject, nevertheless, to the usual examination of the administrative and accounting officers.

RENT OF A BUILDING FOR SMALLPOX PATIENTS IN THE DISTRICT OF COLUMBIA.

The appropriation made in the act of March 3, 1903, for preventing the spread of contagious diseases in the District of Columbia, not having provided for the rent of buildings "in terms," within the meaning of the act of March 3, 1877, it is not applicable to the rent of a building for the accommodation of persons having contagious diseases, unless there is a class of patients which the act requires to be cared for for which no provision whatever has been made and which can only be provided for by renting a building.

(Comptroller Tracevell to the Commissioners of the District of Columbia, August 19, 1903.)

In your communication of August 14, 1903, you request my decision of a question which you present as follows:

"The Commissioners of the District of Columbia have the honor to transmit herewith a copy of a communication received by them from the health officer of the District, and to request that you will give them your decision respecting the specific question raised therein in connection with the second inquiry made by the acting auditor of the District, whose communication is also inclosed herewith."

The communication of the auditor of the District of Columbia, dated July 18, 1903, to which you refer, has reference to the approval of a lease "providing a detention camp for smallpox patients." The auditor does not expressly state that there is any building on the ground the lease of which is contemplated, but the context clearly implies that there is.

The question asked by the auditor, to which you refer, is as follows:

"Second. In case the law is construed to include this municipal corporation, are not the Commissioners by the terms

of the act 'to prevent the spread of scarlet fever and diphtheria in the District of Columbia,' approved December twentieth, eighteen hundred and ninety, and the act 'to prevent the spread of contagious diseases in the District of Columbia,' approved March third, eighteen hundred and ninety-seven, and the act making the appropriation to enforce these laws, authorized to rent houses, and to use any and all other proper methods of carrying out the expressed intention of Congress, more particularly in that to fail to provide a place of detention for those suffering or supposed to be suffering with this most dangerous contagious disease (smallpox) would be to nullify the purpose of the law?"

The appropriation to which the auditor refers, which is contained in the act of March 3, 1903 (32 Stat., 973), is in the following terms:

"For the enforcement of the provisions of the act to prevent the spread of scarlet fever and diphtheria in the District of Columbia, approved December twentieth, eighteen hundred and ninety, and the act to prevent the spread of contagious diseases in the District of Columbia, approved March third, eighteen hundred and ninety-seven, and for investigating the cases of typhoid fever reported to the health department under the provisions of an act to require cases of typhoid fever occurring in the District of Columbia to be reported to the health department of said District, approved February fourth, nineteen hundred and two, under the direction of the health officer of said District, including purchase and maintenance of necessary horses, wagons, and harness, twenty-five thousand dollars."

As the auditor's question pertains to the leasing of a building for smallpox patients, the acts of December 20, 1890, and February 4, 1902, which relate to scarlet fever and diphtheria only, are not applicable to the case presented. The act of March 3, 1897 (29 Stat., 635), provides for preventing the spread of contagious diseases generally, including smallpox. In the communication of the health officer of the District, which you transmit, he refers to the following provision contained in this act, as impliedly authorizing the renting of buildings in the District:

"SEC. 25. That the Commissioners of said District be, and they are hereby, authorized and empowered, whenever said District is, in their judgment, threatened or afflicted with any contagious disease, to cause house-to-house inspections to be made, to require, especially, the cleansing and disinfection of premises or parts of premises, to provide accommodations for such persons as may be threatened by or afflicted with any of

the diseases aforesaid, to provide gratuitous vaccination and distribution of disinfectants, and to do or cause to be done such other acts not contrary to law as may be necessary, in their judgment, to prevent the introduction or spread in said District of any disease aforesaid."

The act of June 22, 1874 (18 Stat., 144), contains the following provision:

"Hereafter no contract shall be made for the rent of any building, or part of any building, in Washington, not now in use by the Government, to be used for the purposes of the Government until an appropriation therefor shall have been made in terms by Congress."

This provision is repeated in the act of March 3, 1877 (19 Stat., 370), and the following provision is added thereto:

"and that this clause be regarded as notice to all contractors or lessors of any building or any part of building."

In my decision of August 7, 1903, I held that this provision is applicable to the government of the District of Columbia. The specific question which is presented therefore is whether the appropriation quoted, *supra*, for the enforcement of the provisions of the act of March 3, 1897, *supra*, when read in connection with the provisions of that act, provides "in terms" for the rent of a building in Washington for the detention of smallpox patients.

The particular language in section 25 of that act, quoted, *supra*, which it has been suggested may have that effect, is the following:

"to provide accommodations for such persons as may be threatened by or afflicted with any of the diseases aforesaid."

I think there is no doubt that the appropriation is to be construed as if it actually contained these words and the other provisions of the act. But when so read I do not think it provides "in terms" for the rent of a building in Washington. I think the words "in terms," in connection with the context, mean express provision for the rent of a building, or language equivalent thereto.

But there is another consideration which might give the provision the effect of authorizing the rent of a building.

If it was clearly the intention of Congress in enacting the provision for such accommodations to authorize the renting of a building or buildings, such authority, granted by a later

statute, would operate to except this appropriation from the prohibition contained in the act of June 22, 1874, *supra*. If at the time of the passage of the later act there was no other way to provide suitable accommodations for the purpose than by the renting of a building and such intention is found in the language of the act, such fact would create a strong implication that Congress so intended. But the act contains other provisions which suggest a doubt as to this being the only way to provide for such cases. These provisions are as follows:

"SEC. 7. That it shall be the duty of the person in charge of any case of contagious disease in said District to cause such case, immediately upon the discovery thereof, to be removed to a room or rooms on the premises where it occurs, as far as practicable from rooms occupied by other persons not affected by such contagious disease. * * *"

"SEC. 21. That whenever any person in said District is an inmate of any premises occupied by three or more families, or of any tenement house, boarding house, lodging house, hotel, or apartment house, and is suffering from any contagious disease, and can not, in the opinion of said health officer, be properly isolated in such premises, tenement house, lodging house, hotel, or apartment house, said person shall be removed as expeditiously as possible, under direction of said health officer, to the public hospital or to such other place satisfactory to said health officer, provided by and at the expense of said person, his parents or guardians. * * * Any person suffering from any contagious disease, and requiring to be treated at public expense, may, at the discretion of said health officer, be removed to the public hospital for treatment.

"SEC. 22. That in every hospital and dispensary in said District there shall be provided and maintained a suitable room or rooms for the isolation of persons infected with any contagious disease aforesaid, or any other disease ordinarily recognized as contagious; such persons shall, immediately upon the discovery of the nature of their sickness, be separated from the other persons and other patients at such dispensary or hospital."

The Attorney-General, in considering a similar question, expressed the following views:

"While it is true, as stated by Colonel Casey, that all the works under the War Department requiring engineering supervision must be supplied with offices where planning, consultations, and drafting can be carried on, yet when a duty of this character is devolved upon the Secretary of War, and

no appropriation is made for the hire of an additional building, it must be considered that Congress has determined that the accommodations now at his disposal are sufficient. While such buildings are a part of the appliances required in the construction of the works, and might properly be charged to the appropriation for those works if they were required where accommodations had not been provided by the Government to the officer to whom their expenditure was intrusted, yet where such accommodations are provided, it can not be held that additional ones may be hired because those provided are inconvenient or insufficient in the judgment of those who are to conduct the business. It must be held that Congress, in directing that no building should be hired to be used for the purposes of the Government until an appropriation therefor shall have been made in terms, has determined otherwise." (15 Opin. Atty. Gen., 276.)

I have therefore to advise you that the appropriation referred to, read in conjunction with said act of March 3, 1897, *supra*, does not authorize the renting of any building in Washington for the accommodation of any person for the purpose for which the means of accommodation are pointed out by said sections 7, 21, and 22, or other sections of the act which point out means of accommodation for persons suffering from contagious diseases, or for the accommodation of any other person suffering with a contagious disease, unless accommodations for such other persons were not provided or pointed out at the time of the passage of the act *supra*.

If there be such a class of persons, of which I have no knowledge, it may be said as relates to them that the later expression of Congress, "to provide accommodations for such persons as may be threatened by or afflicted with any of the diseases aforesaid," is repugnant and obnoxious to the restrictions contained in the act of Congress prohibiting the rental of buildings in the District of Columbia, but it can not be said that said language is repugnant to said act where means of accommodation are pointed out in said later act other than in buildings which must necessarily be rented—in point of fact, in buildings owned or occupied by the persons afflicted with contagious diseases, or in public hospitals.

Repeals, *pro tanto* or in whole by implication, are not favored and will not be indulged in when it is possible to reconcile the language of the acts so that each may be effective to accomplish the purpose for which enacted.

Outside of the language above quoted there is nothing in

these acts repugnant to each other. The mere fact that the accommodations provided for by Congress are not sufficient to accomplish such a quarantine or detention of patients suspected as suffering from contagious diseases as you think circumstances demand, is no reason why the later law, in the absence of controlling language showing the intention of Congress to provide different means from what it did, should repeal the former.

If you have authority to use the appropriation named to rent buildings for the purpose named, it is upon the sole ground that Congress has required that you furnish accommodations for and attention to a certain class of patients for which it has made no provision whatever, and had no provision made therefor at the date of the act in question, and that in order to obey said mandate of Congress it is necessary to rent buildings in the District of Columbia.

PAY OF THE MILITIA OF A STATE WHILE PARTICIPATING IN THE ENCAMPMENTS OF THE REGULAR ARMY AND IN FIELD OR CAMP SERVICE.

Under the provisions of sections 14 and 15 of the act of January 21, 1903, the militia of a State or Territory are entitled, while participating in the encampments and maneuvers of the Regular Army, and while engaged in field or camp service for instruction, to pay, subsistence, and transportation allowances from the time of their departure from their home rendezvous until their return thereto.

(Assistant Comptroller Mitchell to the Secretary of War, August 20, 1903.)

By the reference of the Adjutant-General, U. S. Army, dated the 8th instant, my decision is asked as to what period the organized militia of any State or Territory or of the District of Columbia is entitled to pay, subsistence, and transportation, under sections 14 and 15 of the act of January 21, 1903, entitled "An act to promote the efficiency of the militia and for other purposes." (32 Stat., 775.)

Section 1661 of the Revised Statutes as amended provides:

"That the sum of one million dollars is hereby annually appropriated, to be paid out of any money in the Treasury not otherwise appropriated, for the purpose of providing arms, ordnance stores, quartermaster stores, and camp equipage for issue to the militia."